

# COMMONWEALTH OF VIRGINIA

DELEGATE JOHN COSGROVE, Chair  
SENATOR MAMIE LOCKE, Vice Chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### AGENDA

#### **Virginia Housing Commission Governor's Housing Conference, Hampton Roads Convention Center, Grand Ballroom C 1610 Coliseum Drive, Hampton, Virginia**

Members present: Delegate John Cosgrove, Senator Mamie Locke, Delegate Daniel Marshall, Mark Flynn, T.K. Somanath, and Melanie Thompson

Staff present: Elizabeth Palen and Beth Jamerson

#### **I. Welcome and Call to Order**

- **Delegate John Cosgrove; Chair**
  - The meeting was called to order at 1:00 p.m.
- **Delegate Cosgrove** suggested that meetings may be more effective if the presenters would submit their materials to Elizabeth Palen at Legislative Services one week prior to the meeting date; she will then be able to send the materials to the members for prior review.

#### **II. Report From the Neighborhood Transitions and Residential Land Use Work Group**

- **Repair of Derelict Buildings—proposed legislation**
  - **Delegate Cosgrove** noted that Delegate Dance was unable to attend the meeting, and asked if anyone from the City of Richmond was present to speak on this issue.
  - **Jon Baliles**, Planning & Development Review, City of Richmond, explained the concept of receivership. After initiating spot blight proceedings, localities would be permitted to appoint a receiver to make necessary repairs to the property to bring the building up to Code before the spot blight proceedings conclude. This process will be used for long-vacant and blighted properties and will restore those buildings to a habitable condition.
  - **Jon Baliles** noted that at the last meeting involving receivership, Delegate Cosgrove asked the city to discuss the proposed legislation with Joe Waldo. A summary of the bill has been sent to Joe Waldo, but Mr. Waldo has not

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DELEGATE DAVID L. BULOVA  
DELEGATE JOHN A. COSGROVE  
DELEGATE ROSALYN R. DANCE  
DELEGATE DANIEL W. MARSHALL, III

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR MARY MARGARET WHIPPLE

MARK K. FLYNN  
T.K. SOMANATH  
MELANIE S. THOMPSON

yet responded, so the city has not had the opportunity to discuss the matter with him.

- **Delegate Cosgrove** mentioned that Delegate Chris Stolle called recently with questions about receivership. He asked Mr. Baliles to contact Delegate Stolle and answer those questions.
- **Jon Baliles** ensured Delegate Cosgrove that he would speak with Delegate Stolle and address his concerns prior to the Commission meeting in December.
- **Delegate Cosgrove** asked Chip Dicks, with the Virginia Association of Realtors, whether the bill had been sufficiently amended over the interim to address the concerns with the bill in its original form.
- **Chip Dicks** responded that he believed it had been; there were concerns with the original bill that it bypassed eminent domain and due process procedures. This version of the bill requires the locality to first make a determination that the house meets the requirements for spot blight, which requires the locality to take the property at the end of the process. Receivership is a process by which the locality may go to court and appoint a receiver to make the necessary repairs to the property rather than condemning it; while this process takes place the property owner remains the owner. Then the property may be sold for a greater value than it otherwise would have been. Receivership is more beneficial to the original property owner because this bill provides for any profit from the sale of the property to be given to him, whereas if the property were sold in its dilapidated condition there would be no surplus. The locality has the authority to place a lien on the property up to the amount of the investment. Receivership may also help in circumstances involving the derelict structure legislation recently passed by this Commission. To his knowledge, none of the professional real estate organizations have any issues with the bill in its current form.
- **T.K. Somanath** urged the Commission to support the bill; historic buildings are being left in disrepair and this bill would help to address that problem.
- **Delegate Marshall** recommended that the Commission address any eminent domain concerns from property rights advocates, including Mr. Waldo, before the next meeting in December.
- **Action on the bill was delayed until the December meeting.**
- **Landlord-Tenant Issues**
  - **Prohibition on Self-Help**
    - **Christy Marra**, with the Virginia Poverty Law Center (VPLC), explained that the purpose of this legislation is to align provisions of the Virginia Landlord-Tenant (VLTA) with corresponding provisions of the Virginia Residential Landlord-Tenant Act (VRLTA). The VLTA expressly states that a landlord cannot recover possession through self-help, including turning off essential services or changing the locks without a court order. The Virginia Court of Appeals held in January that when a lease does not fall under the VLTA, then the tenant can inadvertently waive the

protection prohibiting self-help. This bill is designed to add to the VLTA the provisions that are found in the VRLTA, which states that this protection cannot be waived.

- **Chip Dicks** explained that no one in the real estate industry disputes the need for clarification. There is disagreement, however, over line six, because there is no definition for “residential dwelling unit.” It is common in commercial leases for a landlord to use self-help in evicting a tenant, and this has been consistently upheld by the Virginia Supreme Court. Additionally, hotel and motel interest groups have expressed concern regarding the requirement in lines 25 and 26 that will force them to obtain unlawful detainers to kick out guests.
- **Christy Marra** noted that under the VRLTA a hotel/motel guest is entitled to protection if that person has been a guest for more than 30 days, and the VPLC wants to include this protection in the VLTA.
- *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Inclusion of Termination Notice in Summons for Unlawful Detainer—proposed legislation**
  - **Christy Marra** explained that stakeholders are still working together to reach an agreement on this bill.
  - **Chip Dicks** asked the Commission to pass the bill by for consideration, and take it up again at December’s meeting.
- **Issuance of Receipts Accounting for Rental Payments—proposed legislation**
  - **Christy Marra** explained that stakeholders had all reached an agreement regarding this bill, and it is acceptable in this form. The bill requires a landlord to issue a rent receipt to a tenant detailing how the tenant’s rent payment is credited, provided the tenant makes this request in writing. The landlord must issue the receipt within 10 business days of receipt of the tenant’s written request.
  - *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **HB 2045; Blighted Property (Ebbin, 2011)—no proposed legislation**
  - **Delegate Cosgrove** noted that there is no proposed legislation regarding blighted property and former HB 2045.
- **The Future of Tax Credits After *Virginia Historic Tax Credit Fund 2001 LP v. Commissioner of Internal Revenue*, 639 F.3d 129 (2011)—no proposed legislation**
  - **Delegate Cosgrove** noted that there is no proposed legislation at this time regarding tax credits.

### **III. Report From the Common Interest Communities Work Group**

- **The Virginia Real Estate Time-Share Act—proposed legislation**
  - **Delegate Cosgrove** noted that he would explain the work done by the Common Interest Communities Work Group since Senator Whipple was

unable to attend the meeting because she was attending the Senate Finance retreat.

- **Delegate Cosgrove** noted his intention to patron the bill. This bill changes the way the time-share industry does business in Virginia. Although the legislature cannot constitutionally allow current owners of time-shares to alter their existing contracts with time-share companies, this bill will affect how time-shares are sold, marketed, and resold.
- **Delegate Cosgrove** briefly explained the changes to the Time-Share Act that this legislation would impose:
  - A time-share company licensed outside the state of Virginia does not have to be licensed in Virginia to solicit existing customers who are residents of Virginia. This will allow existing customers to purchase or trade time-shares through the out-of-state company with which they are currently doing business.
  - New resale regulations require anyone reselling a time-share in Virginia to be regulated in Virginia.
  - Time-share deeds cannot be transferred without the consent of both parties; this is to prevent unfair practices on behalf of both the consumer and the developer.
  - A new section requires that audited annual reports be provided to time-share owners.
  - A buyer's acknowledgment must be provided to time-share purchasers disclosing information including whether the developer owns a buyback program or not, and makes clear that the purchaser is buying a time-share for personal use, rather than investment purposes or resale potential, only. These disclosures must be provided on a separate document from the contract, and written in clear and concise language.
  - New sections include improved disclosure requirements and prohibited practices.
  - The bill provides that the Common Interest Community Board (CICB) will regulate the time-share industry in Virginia.
- **Senator Locke** asked why the punishment for violation of these sections was changed from a felony to a misdemeanor.
- **Delegate Cosgrove** explained that this was due to the financial implications involved in including felonies in legislation; additionally, in the past 5 years no one has been charged under this section.
- *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Bank-Owned Abandoned Condominium Foreclosures—no proposed legislation**
  - **Delegate Cosgrove** explained that there is no proposed legislation at this time regarding bank-owned abandoned condominium foreclosures.
- **SB 1253; Virginia Property Owners' Association Act (Vogel, 2011)—no proposed legislation**

- **Delegate Cosgrove** explained that there is no proposed legislation regarding the Virginia Property Owners' Association Act and former SB 1253.

#### **IV. Report From the Affordability, Real Estate Law, and Mortgages Work Group**

- **Manufactured Home Titling—no proposed legislation**
  - **Delegate Cosgrove** noted that he would explain the work done by the Affordability, Real Estate Law, and Mortgages Work Group since Delegate Oder had been the chair. There is no proposed legislation at this time regarding manufactured home titling.
- **SB 830 Fair Housing Law (Locke 2011), and HB 1578; Fair Housing Law (Dance, 2011)—no proposed legislation**
  - **Delegate Cosgrove** explained that there is no proposed legislation regarding fair housing law and former SB 830 and HB 1578.

#### **V. Report From the Mortgages Sub-Work Group**

- **Potential Impacts of Consumer Financial Protection Bureau on Mortgage Loan Originators in Virginia—proposed legislation**
  - **Delegate Marshall** asked Maureen Stinger of the Virginia State Corporation Commission to provide the Commission with an update on how Virginia's recently enacted legislation governing mortgage loan originators (MLOs) will be affected by the newly established Consumer Financial Protection Bureau (CFPB).
  - **Maureen Stinger** explained that the federal government enacted the the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act in 2008, and allowed states two years to craft conforming legislation. Virginia was at the forefront in enacting legislation regulating MLOs. Although Virginia has regulated lenders and brokers for at least 30 years, MLOs are new class of licensees—the actual human beings dealing directly with customers. The federal act requires licensure for any individual who engages in the business of being a mortgage originator. Virginia's legislation uses the phrase “acting as a MLO,” which is a stricter standard, and would include, for example, the Virginia Housing Development Authority (VHDA) and the Department of Housing and Community Development (DHCD), because they act as MLOs without engaging in the business of being a mortgage loan originator. The Department of Housing and Urban Development (HUD) issued a final ruling over the summer interpreting Virginia's act, and clarified that HUD no longer has the ability to issue exceptions, but it did clarify who is subject to exemptions, including housing authorities and housing finance agencies such as VHDA. HUD ruled that certain bona fide non-profit organizations are subject to exemptions—and there are strict criteria for what that entails so as to avoid a for-profit organization creating a non-profit and feeding mortgages into the for-profit company.
  - **Maureen Stinger** explained that the bill that has been crafted to bring Virginia into compliance with the SAFE Act as per the HUD ruling amends Virginia Code §§ 6.2-1700 and 6.2-1701. This bill changes “act as” to “engage in the business of” and will conform Virginia's legislation to the

federal act. Every other chapter in Title 6.2 uses the “engaging in the business of standard” as well, hence this is not a departure from existing Code language.

- **Bill Shelton**, the director of DHCD, added that until HUD issued the ruling over the summer it was unknown how Virginia’s legislation would be affected. Affordable housing programs, down payment assistance programs, and the like, were swept into licensure by Virginia’s act, but now the SCC can exempt government entities or establish standards for bona fide non profits, and this will remove what has been an impediment to affordable housing programs in Virginia.
- **Delegate Marshall** asked Ms. Stinger if there was any chance the bill would need to be re-written before session.
- **Maureen Stinger** explained that she is still discussing technicalities with the federal government, and there may be technical changes in order to ensure the legislation complies with the federal act, but any changes will be explained at the full Commission meeting in December.
- **Delegate Marshall** invited other interested parties to speak about the proposed legislation
- **Dewayne Alford**, with the Virginia Association of Housing and Community Development Officials (VAHCDO), explained that VAHCDO works with block grants to assist in rehousing across the Commonwealth. Amending the existing legislation would make VAHCDO that much more efficient and open up the pipeline of funding it receives from HUD. VAHCDO is in favor of the legislation, and believes this bill is more closely aligned with the original intent of the act—to protect consumers while facilitating assistance to low-income individuals.
- **Delegate Cosgrove** noted that the Commission would delay action on this bill until the full Commission meeting in December to allow the SCC to make any necessary technical changes.
- **Mortgage Loan Originators/Owner Financing—proposed legislation**
  - **Chip Dicks** explained that this bill would amend Virginia Code §§ 6.2-1600 and 6.2-1602 to provide an exemption section for owner financing. Currently, although the definition of mortgage loan excludes refinancing by owners, real estate broker firms are treating owner financing as though it is not exempt, therefore a separate section to exempt owner financing is necessary.
  - *The bill was properly moved and seconded, and sent forth with the recommendation of the Housing Commission*
- **Foreclosure on Liens for Unpaid Assessments—proposed legislation (2)**
  - **Pia Trigiani**, with MercerTrigiani, explained the first bill deals with Virginia Code §§ 55-79.84 and 55-516 and liens for assessments. Condominium associations may enforce assessment liens through foreclosure on the unit, and there are often first trust liens on the property. The Virginia Supreme Court held in *Board of Directors of the Colchester Towne Condominium Council of Co-Owners v. Wachovia Bank* that the proceeds of a foreclosure sale for a condominium would have to be first

applied to the first trust lien before an association may recover any assessment liens.

- **Delegate Marshall** invited other interested parties to address the Commission.
- **Matt Bruning**, with the Virginia Bankers Association (VBA), explained that the VBA has not yet had an opportunity to review *Colchester* and its applicability to current law, and asked that the Commission delay action on the bill until the December meeting. There were no objections to this request.
- **Pia Trigiani** explained the second proposal, which involves the enforcement of rules under Virginia Code § 55-513. Often times properties are not properly maintained after foreclosure has taken place. This bill proposes a solution from the Condominium Act and applies it to the Property Owners' Association Act, which allows a homeowners association access to the lot to perform necessary maintenance and repairs. These costs will be charged to the owner of the lot.
- **Matt Bruning** noted that the VBA is not opposed to the concept of this bill, the VBA wants to ensure that the costs are properly attributed to the owner of the property at the time the costs are incurred.
- **Pia Trigiani** acknowledged that if the costs are incurred while the property is owned by the original property owner, then he is responsible for the expenses, and if the property is lender-owned when the costs are incurred, the lender is responsible for the expenses.
- **Matt Bruning** agreed that lender-owned properties should be maintained by the lender, and if they are not this bill is a reasonable alternative.
- **Delegate Marshall** requested that action on these bills be delayed until the December meeting. There was no objection.
- **SB 795; Foreclosure Procedures (McEachin, 2011)—referred to the Virginia Foreclosure Task Force—no proposed legislation**
  - **Delegate Marshall** explained that at the request of the patron, this bill was referred to the Virginia Foreclosure Task Force.

## **VI. Report From the Housing and Environmental Standards Work Group**

- **Sustainable Community Planning—no proposed legislation**
  - **Delegate Cosgrove** noted that he would explain the work done by the Housing and Environmental Standards Work Group since Senator Watkins was unable to attend the meeting because he was attending the Senate Finance retreat. There is no proposed legislation at this time regarding sustainable community planning.
- **Charlottesville Affordable Housing Program—no proposed legislation**
  - **Delegate Cosgrove** explained that the Charlottesville Affordable Housing Program spoke before the Commission earlier in the interim to provide an update, but no proposed legislation resulted.
- **The Virginia Tobacco Indemnification and Community Revitalization Commission and Energy Efficient Affordable Housing—no proposed legislation**

- **Delegate Cosgrove** explained that the Commission heard an update on funding by the Virginia Tobacco Indemnification and Community Revitalization Commission and the work that has been done on energy efficient affordable housing by the Partnership for Design and Manufacture of Affordable, Energy Efficient Housing Systems, but that no proposed legislation resulted.
- **Update on Green Buildings Code**
  - **Emory Rodgers**; Deputy Director, Department of Housing and Community Development
    - The International Green Construction Code (IGCC) is the standard in the Uniform Statewide Building Code (USBC) and the Fire Code. There was a final hearing on the IGCC on November 1–5. The IGCC goes beyond the USBC and the Fire Code; there are elements involving land use, landscaping, and post-occupancy requirements, among other issues. The IGCC will be published in March 2012. Based on the hearings, there will likely be petitions involving mandates that may be required by local governments. There will also likely be stakeholders who seek to incorporate part of all of the IGCC into Virginia’s code.
  - **Delegate Marshall** asked Mr. Rodgers to return to the December meeting to give a more detailed overview. He expressed concern that an extensive cost-benefit analysis has not been performed yet.
  - **Delegate Cosgrove** agreed that this topic could be discussed more thoroughly at the December meeting, however, since he operates a construction and demolition debris recycling business another member will be asked to run the meeting at that point.
  - **Emory Rodgers** noted that many provisions in the document have not yet had a cost analysis. There are things outside of the purview of DHCD’s regulatory process
  - **Delegate Marshall** asked when the IGCC will become part of the USBC.
    - **Emory Rodgers** explained that whether any of the IGCC becomes part of the USBC will be determined by a consensus of the state board. The board may decide that the current energy code is adequate.
  - **T.K. Somanath** asked whether Mr. Rodgers could also give a presentation on best practices in energy conservation at the December meeting if time allows.
    - **Emory Rodgers** noted that the number of best practices is extensive, and a presentation on all environmental best practices will require further expertise.

## VII. Report From the Municipal Water Issue Sub-Work Group

- **Municipal Utility Services—proposed legislation**
  - **Delegate Cosgrove** noted that Delegate Oder had been the chair of this sub-work group, and asked if a member of that group would speak on this issue.



- **Chip Dicks** explained that there are still issues to resolve with this legislation. Currently, a tenant can get water and sewer services in his landlord's name, and if the tenant fails to pay his water and sewer bills, the locality can put a lien on the landlord's property. A compromise that has been suggested is to allow a landlord to conduct a credit check on the tenant, and after this has been done the tenant can open a water and sewer account in the landlord's name. Another compromise is to allow the landlord to collect a security deposit from the tenant that may not exceed five months of water and sewer bills, which will average approximately \$150.00. It is not practical for a landlord to take a tenant to court because court costs and fees can exceed the amount of the lien. The VPLC has an objection to this proposal, and the proposed solution was to exempt Section 8 tenants from the security deposit requirement, however, this is one of the issues still being discussed.
- **John Lain**, with the Virginia Water Waste Authorities voiced his support for this bill.
- **Brian Gordon**, with the Apartment and Office Building Association (AOBA) also voiced his support for this bill.
- **Christy Marra** explained that the VPLC is concerned with the provision allowing a landlord to obtain a security deposit from a tenant. Five months of water and sewer services could be significantly higher than \$150, and this may prove to be cost-prohibitive for many tenants. Although exempting Section 8 tenants is helpful, there is a scarcity of Section 8 vouchers, and there are many people who are eligible for but unable to obtain these vouchers.
- *Action on the bill was delayed until the December meeting.*

### **VIII. Housing Policy Direction**

- **Susan Dewey**; Director, Virginia Housing Development Authority
  - There has been significant progress in the past two years, and Virginia is in the forefront of housing policy. Moving forward with the housing policy framework, the goals include finding solutions to homelessness, focusing increased attention on issues cutting across Secretariat boundaries since housing is related to economics, transportation, and many other issues, and addressing issues that are subject to outcomes in other policy areas. There is a broad range of housing objectives: 1) recognize the role of the housing industry as vital economic development engine within the Commonwealth, 2) promote sustainable and vibrant communities, 3) ensure the provision of a range of housing options, and 4) prevent and reduce homelessness.
  - The nature of the work that is being done is very broad and a large group of stakeholders are guiding policy development.
    - The Housing Policy Work Group and an Advisory Committee are guiding the framing of recommendations for each goal, and combined make up approximately 80 members.

- The Homeless Outcomes Advisory Committee has developed a Homeless Outcomes Action Plan and seeks to reduce homelessness by 15% over the next few years.
  - The Virginia Foreclosure Task Force has been focusing on the legislation that was referred by the General Assembly and the Housing Commission, and will issue a report on those issues shortly. The Task Force also studies foreclosure data and its impact on the Commonwealth.
  - A Housing Policy Track is being established at the Governor's Housing Conference and will study issues in the housing policy report and providing an in-depth analysis of those issues.
- Key issues in housing policy in the coming year are the implementation of the Homeless Action Plan, addressing foreclosure issues, and initiating other activities that can be moved forward quickly.
- Housing has a significant impact on the economy, and housing policy has focused on ensuring a flow of mortgage credit for the purchase and rental of property. The Foreclosure Task Force has been tracking and reporting on foreclosure trends, which includes financial literacy, and has been working with the Emergency Home Loan Program.
- In promoting sustainable communities, DHCD and VHDA is working on the initiation of a process to build consensus on voluntary "visitability" and Universal Design standards for housing programs to assist those with special needs.
- To expand housing options, policy has looked to better accommodate those with special needs, including those with physical or mental disabilities, those on a fixed income, etc.
- One of the keys to reducing and preventing homelessness is rapid rehousing for those who are recently homeless. There have been new positions established within the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the Department of Medical Assistance Services (DMAS) to coordinate housing and support services.
- Factors that may impede progress in the future are the uncertain impact of significant federal fiscal retrenchment on state agency housing activities and priorities and Virginia's overall budget. Continuing to look to resources available to Virginia to coordinate those resources and use them as efficiently and effectively as possible will be very important moving forward.
- **Mark Flynn** commented that the work being done to address the housing-jobs-transit link and promoting sustainable communities is fantastic. Local government planning plays a role in accomplishing these goals, and the tool the General Assembly used was Urban Development Area (UDA) legislation. The 2012 session may see a repeal of that legislation, and that will also have an affect on achieving these housing policy goals.
- **T.K. Somanath** asked about incentives for the promotion of sustainable communities.

- **Susan Dewey** responded that VHDA administered a federal loan housing tax credit that includes points for sustainability.
- **Bill Shelton** added that DHCD provides incentives for communities through funding

**IX. Public Comment**

- There was no public comment.

**X. Adjourn**

- The meeting was adjourned at 2:41 p.m.